



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 26, 2009

CBCA 1548-RELO

In the Matter of RANDY PREWITT

Randy Prewitt, Albany, GA, Claimant.

Sandra Rickert, Program Analyst, Accounting & Financial Systems Branch, United States Marine Corps, Albany, GA, appearing for Department of Defense.

GILMORE, Board Judge.

Claimant, Randy Prewitt, is a former member of the United States Army who was stationed in Germany. After retiring from the Army, Mr. Prewitt accepted a civilian appointment with the United States Marine Corps (USMC or agency), and continued to live in Germany until he was transferred to the United States pursuant to a permanent change of station (PCS). The agency has refused to reimburse Mr. Prewitt for real estate transaction expenses related to his move because Mr. Prewitt is a "local hire" under the Department of Defense (DoD) Joint Travel Regulations (JTR) and, as such, is ineligible for reimbursement of those expenses. Mr. Prewitt asks this Board to review the agency's refusal to reimburse his real estate transaction expenses.

Background

Mr. Prewitt is currently a Supervisory Traffic Management Specialist at the USMC Logistics Command in Albany, Georgia. Previously, Mr. Prewitt served in the Army and in 2003, pursuant to a PCS, Mr. Prewitt and his family moved to Germany. While in Germany, Mr. Prewitt retired from active duty. Mr. Prewitt's orders for separation stated that his

retirement/separation date and location would be August 31, 2007, and Germany, respectively. The orders authorized Mr. Prewitt's travel, along with that of his family, and the shipment of household goods, unaccompanied baggage, and a privately-owned vehicle to his home of selection in the United States within a year of his retirement.

On September 4, 2007, before the expiration of Mr. Prewitt's travel orders from the Army authorizing travel to his home of selection, Mr. Prewitt accepted an overseas appointment as a civilian transportation specialist with the USMC Logistics Command in Germany. Mr. Prewitt and his family continued to live in Germany. In July 2008, Mr. Prewitt received orders authorizing a PCS to USMC Logistics Command, Albany, Georgia, and was instructed to report to Georgia at the end of the month. Mr. Prewitt's travel orders authorized real estate transaction expenses, relocation income tax allowance, miscellaneous expenses, and a travel advance of \$7848. A human resources specialist at the USMC Logistics Command, Albany, Georgia, indicated to Mr. Prewitt that he would be reimbursed for certain real estate transaction expenses incurred as a result of his move. The chief of staff was the authorizing/order-issuing official who signed Mr. Prewitt's travel orders authorizing reimbursement of certain real estate transaction expenses.

In November 2008, after his move to Georgia, Mr. Prewitt claimed a total of \$8845.91 in real estate transaction expenses. The USMC Office of the Staff Judge Advocate reviewed Mr. Prewitt's claim and recommended that Mr. Prewitt be reimbursed \$4976.50, only part of the amount claimed. Shortly thereafter, the Director of the Appropriated Funds Division approved reimbursement in the amount of \$4976.50.

Upon further review, however, USMC's Accounting & Financial Office denied Mr. Prewitt's claimed real estate expenses in their entirety, because Mr. Prewitt was a local hire and under the JTR, real estate transaction expenses of a local hire cannot be reimbursed. Mr. Prewitt claims that since he relied on the advice from the human resources specialist, he should be reimbursed \$4976.50 in real estate transaction expenses.

Discussion

Locally Hired Employee

A DoD employee who is transferred to a duty station in the United States from a foreign station outside the United States is entitled to be reimbursed for real estate expenses *only if* the employee was initially transferred to the foreign station from a post in the United States. 5 U.S.C. § 5724(d)(2) (2006); 41 CFR 302-11.2(b) (2007); JTR C5750-B.1. Locally hired employees are not eligible for reimbursement. JTR C5750-D.3a. Because locally hired employees are initially hired outside the United States, they are not eligible for the real estate

transaction expense reimbursements available to those employees who are first hired while living in the United States, transferred abroad, and then return to the United States.

JTR C5750-D.3 provides that a “locally hired employee in par. C5566-E.2a(1) (former member of U.S. armed forces)” is ineligible for real estate transaction expenses in conjunction with the change of a permanent duty station (PDS). JTR C5566-E.2a(1) defines a locally hired “former military member” as someone who was:

- (a) Separated/retired locally (within the foreign OCONUS [outside the continental United States] country in which the civilian position is located to which the individual is appointed) while serving in a foreign OCONUS area, and
- (b) Appointed to a vacant appropriated-fund civilian position before expiration of that individual’s authorization for return travel and transportation to a CONUS [continental United States]/non-foreign OCONUS area accruing from the prior military service.

Mr. Prewitt satisfies the definition of a locally hired employee who is a former military member because he (a) retired from the Army while serving in Germany, a foreign OCONUS area, and (b) before his authorization for return travel to the United States expired, he was appointed to and accepted a civilian position with the USMC in Germany.

To clarify any confusion regarding eligibility for reimbursement, the JTR also state:

C5753 EXCLUSIONS

The following individuals are not eligible for reimbursement under the provisions of this Chapter [permanent duty travel], a/an:

....

- 6. Employee hired locally at a location in a foreign area upon transfer to a PDS in CONUS or non-foreign OCONUS area.

Mr. Prewitt is a locally hired employee under the JTR, and therefore he is not eligible to be reimbursed for his real estate expenses. While it is true that Mr. Prewitt was first transferred from the United States to Germany when he was in the Army, he retired from the Army and then accepted employment as a civilian while still living in Germany. These

events qualify Mr. Prewitt as a local hire. As a local hire, under the JTR, Mr. Prewitt is ineligible for reimbursement of his real estate transaction expenses. 5 U.S.C. § 5724(d)(2); 41 CFR 302-11.2(b); JTR C5750-D.3a.

In similar cases, the General Services Board of Contract Appeals (GSBCA), our predecessor board that previously decided relocation cases, repeatedly held that local hires were ineligible for reimbursement of real estate transaction expenses. *See, e.g., Dennis Fijalkowski*, GSBCA 15683-RELO, 02-1 BCA ¶ 31,754 (denying reimbursement because claimant had retired from active duty with the Air Force while living in England and thereafter accepted a civilian position that moved him to Arizona); *Marcia A. Devine*, GSBCA 14878-RELO, 99-2 BCA ¶ 30,498 (denying reimbursement because claimant was a local overseas hire and therefore not eligible for reimbursement of such expenses); *Wilbert J. Haggray*, GSBCA 16139-RELO, 03-2 BCA ¶ 32,387 (denying reimbursement because claimant retired from active military duty abroad and accepted civilian employment for the first time abroad).

In the present case, the agency relies on *Henry H. Arnold IV*, GSBCA 16275-RELO, 04-1 BCA ¶ 32,586, in denying Mr. Prewitt's claim. In *Arnold*, the claimant first moved to Germany while serving in the military. Upon completion of his military service, he took a position as a civilian employee working for the DoD and was stationed in Germany until he was transferred to the Corps of Engineers' San Francisco District. The claimant's travel orders, like Mr. Prewitt's, authorized real estate expenses. Upon moving to California, the claimant purchased a home and submitted a claim to the Army for \$6992.23 in transaction expenses, but the Corps' San Francisco District disapproved the claim because he was first hired as a civilian employee by the Government in Germany. Because Mr. Arnold was a "local hire," he was ineligible for reimbursement. The GSBCA agreed with the Government's denial of reimbursement. The agency properly relies on *Arnold* as authority to disallow Mr. Prewitt's reimbursement.

Reliance on Incorrect Advice

_____ It is unfortunate that Mr. Prewitt relied on incorrect advice from the employees in the agency. As this Board stated in *Defense Intelligence Agency Employee*, CBCA 976-RELO, 08-2 BCA ¶ 33,900, at 167,773, "even if an agency made a commitment to reimburse an ineligible employee for real estate expenses, the commitment cannot overcome the fact that Congress has not authorized such reimbursement." Although Mr. Prewitt's travel orders authorized the reimbursement of his real estate expenses, that authorization was erroneous and we do not have authority to uphold erroneous orders.

Decision

Mr. Prewitt's claim is denied.

BERYL S. GILMORE
Board Judge